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No. 90-536

IN THE

Supreme Court Of The United States

October Term, 1990

JOHN GARD, *et al.*,

Petitioners,

v.

WISCONSIN STATE ELECTIONS BOARD, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Wisconsin

PETITIONERS' REPLY BRIEF

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November 8, 1990.

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This reply brief is filed with the Court pursuant to Sup. Ct. R. 15.6. The petitioners will address certain arguments raised in the briefs in opposition by the Wisconsin State Elections Board (the "Board") and respondents Common Cause in Wisconsin, Inc., *et al.* (collectively "Common Cause").

I. THE RECORD IS ADEQUATE.

The opponents challenge the extent of the record in this case, pointing to the brevity of the February 13, 1990 stipulation of facts. However, the record before the Wisconsin Supreme Court included not just that stipulation, but also an extensive factual analysis of campaign financing in Wisconsin, including a statistical breakdown of the sources and uses of political party funds—the focal point of the challenged statute.

If the record were inadequate to deal with the important constitutional questions before it, the Wisconsin Court would have said so. That was not the case. In fact, the Court heavily relied on certain facts in the record in its opinion. See the appendix to John Gard's petition for certiorari (the "Petition"), pp. A-17 to A-27. Petitioners do not dispute these facts; rather, they challenge the Wisconsin Court's application of them. Petition, pp. 18, 23.

Further, petitioners do not challenge the Wisconsin Court's conclusion that the facts show a "potential" or "possibility" for corruption in the same sense that speculation may create a "potential" or "possible" evil to support *any* statute. But petitioners contend that it is an unwarranted extension of the parameters set by this Court for justifying campaign finance regulation: actual or apparent corruption. The question is not mere semantics. Unlike the language cited on page 5 of the Board's brief, there is a substantive distinction between "corruption and the appearance of corruption" and the "potential" (or "possibility") of corruption.

II. THE ISSUES IN THIS CASE MERIT REVIEW.

Common Cause on page 7 of its brief asserts that the petitioners have failed to satisfy the "criteria" in Sup. Ct. R. 10. Petitioners respond as follows. First, the Wisconsin decision conflicts with decisions of this Court. Petition, pp. 14-16, 18. Second, the opponents' briefs and the Wisconsin decision demonstrate confusion about a critical question—whether the applicable standard of review here is that in *Federal Election Commission v. National Right to Work Committee,* 459 U.S. 197 (1982), or the more strict standard in *Federal Election Commission v. National Conservative Political Action Committee,* 470 U.S. 480 (1985). To the extent that any of this Court's decisions have referred to a "potential for corruption" standard (Common Cause's brief, pp. 12-13), the inherent inconsistency between that test and the "actual or appar-

ent" corruption test should be settled by this Court. Third, the Wisconsin Court ignored the challenged statute's particular impact on the constitutional rights of political parties and their members and the fundamental distinctions between parties and PACs. Petition, pp. 20-24. Those questions have not been considered by this Court and the opponents have not addressed that ground for granting the Petition. Finally, Common Cause ignores the fact that Sup. Ct. R. 10.1 states that the factors cited therein do not "fully measur[e] the Court's discretion."

For these reasons, the petitioners respectfully request that this court grant the Petition.

Dated this 8th day of November, 1990.

Respectfully submitted,

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